

# GENERAL CONDITIONS FOR THE SUPPLY OF CASTINGS

ISSUED IN 2003 BY THE ORGANISATIONS FOR THE ENGINEERING INDUSTRIES

AND THE FOUNDRIES IN DENMARK, FINLAND, NORWAY AND SWEDEN

(Hovedorganisationen Dansk Industri and Danske Støberiers Branscheforening, Denmark;

Teknologiateollisuus - Teknologiteollisuuden r.y., Finland; Teknologibedriftenes

Landsforening, Norway; Teknikkföretagen and Svenska Gjuteriföreningen, Sweden)



## Preamble

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.

When used in these conditions the term "written" or "in writing" refers to a document signed by both parties or a letter, fax, electronic mail or other means agreed by both parties.

## Product Information

2. Data in product information and price lists are binding only to the extent that they are expressly referred to in the contract.

## Technical Documents and Technical Information

3. All drawings and other technical documents regarding the goods or their manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party.

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were submitted. They may not without the consent of the other party be copied, reproduced, transmitted or otherwise communicated to a third party.

## Patterns, Tools and Equipment

4. Patterns, tools and equipment to be used in performance of the contract, which are provided by the Purchaser, shall remain the Purchaser's property. The Purchaser shall pay the Supplier for any work necessary to check, adjust or complete such patterns, tools and equipment.

5. Patterns, tools and equipment to be used in performance of the contract, which are provided by the Supplier shall be paid by the Purchaser and shall become his property. The Purchaser shall, however, not become the owner of the Supplier's gating and feeding system. The Supplier shall clearly mark patterns, tools and equipment belonging to the Purchaser.

The Supplier may, however, completely or partially refuse to hand over patterns, tools or equipment that he has manufactured or have had manufactured, provided that it can reasonably be concluded that his technical know how will thereby be made known, and that the Supplier as a result thereof will suffer a loss, which under the circumstances is not insignificant. The Supplier shall in such case reimburse the Purchaser the value of that which he retains.

Where, according to the contract, the Supplier shall provide patterns, tools or equipment, the Purchaser shall reimburse the Supplier's cost of replacement or repair due to normal wear and tear. The same shall apply for replacement or repair due to other causes for which the Supplier is not responsible.

6. The Supplier may not, without the Purchaser's consent, use the Purchaser's patterns, tools or equipment for any other purpose than performance of the contract. Nor may such patterns, tools or equipment be handed over to or otherwise brought to the knowledge of a third party.

7. The Supplier shall store patterns, tools and equipment for as long as deliveries under the contract are made. If patterns, tools and equipment belonging to the Purchaser remain in the Supplier's care after deliveries under the contract have ceased, the Supplier shall store such patterns, tools and equipment at the Purchaser's risk and expense.

All the Supplier's obligations regarding patterns, tools and equipment shall finally cease three years after deliveries have been completed. The Supplier shall, however, if possible, inform the Purchaser before scrapping or otherwise disposing of patterns, tools and equipment.

8. The Purchaser decides to what extent patterns, tools and equipment in the care of the Supplier and belonging to the Purchaser shall be insured. The Purchaser shall bear the cost of such insurance.

9. The Purchaser shall bear the risk and expense of all transport of patterns, tools and equipment to and from the Supplier.

10. The Purchaser shall indemnify and hold the Supplier harmless against all consequences of claims based on infringement of patents, design patents, trade marks or other property rights, where such claims result from the manufacture of the goods in accordance with a specification, drawing, sample, pattern, tool or other equipment provided by the Purchaser.

## Weights

11. Weights calculated by the Purchaser and the Supplier before casting are only estimates and the price shall be adjusted according to the actual weight in case of deviations.

## Production Samples

12. Goods manufactured in series shall be in conformity with the production samples approved by the Purchaser, and production shall not start before the Supplier has received the Purchaser's written approval.

## Tests

13. Where the parties have agreed that the goods shall be tested before delivery in

order to decide whether they meet specific requirements, such test shall be carried out at the Supplier's premises or where he finds it appropriate. If technical requirements for the test have not been agreed upon, the test shall be carried out in accordance with general practice in the foundry industry in the Supplier's country.

14. If the Purchaser has requested to be informed, the Supplier shall notify the Purchaser of a delivery test in sufficient time to permit the Purchaser to be present at the test. The test may be carried out in the Purchaser's absence provided that he has received such notice.

The Supplier shall keep a record of the test. The report containing the record shall be sent to the Purchaser. The report shall, unless otherwise shown by the Purchaser, be considered to correctly record the test and its results.

15. If the goods at such test are found not to be in compliance with the contract, the Supplier shall, unless the Purchaser accepts the deviation, without delay ensure that the goods comply with the contract. A new test shall then be carried out if so required by the Purchaser. The Purchaser may not, however, require a new test if the defect was insignificant.

16. If no other division of the costs has been agreed, the Supplier shall bear all cost of tests carried out in accordance with Clause 13. The Purchaser shall, however, at such tests bear all costs relating to his representatives, including travelling and living expenses.

## Delivery

17. Where a trade term has been agreed, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the contract. The Supplier shall not, unless otherwise expressly agreed, be obliged to provide packaging for the goods.

If no trade term is specifically agreed the delivery shall be considered to be Ex Works exclusive of packaging.

## Time for Delivery. Delay

18. If, instead of a fixed date for delivery, the parties have agreed on a period of time within which delivery shall take place, such period shall start to run at the formation of the contract.

19. If the Supplier finds that he will not be able to deliver the goods at the agreed time for delivery or if delay on his part seems likely, he shall without undue delay notify the Purchaser thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected. If the Supplier fails to give such notice, he shall, regardless of the provisions of Clauses 21 and 22, reimburse the Purchaser any additional expenses which the latter incurs and which he would have avoided, had he received the notice in time.

20. If delay in delivery is caused by a circumstance which under Clause 45 constitutes ground for relief or by an act or omission on the part of the Purchaser, including suspension by the Supplier under Clause 26, the time for delivery shall be extended by a period which is reasonable having regard to the circumstances in the case. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

21. If the Supplier fails to deliver the goods on time, and the parties after notice according to Clause 19 have not agreed on an extended time for delivery, the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the agreed price for each complete week of delay. If the delay concerns only part of the goods, the liquidated damages shall be calculated on the part of the price which is properly attributable to that part of the goods which cannot be used due to the delay.

The liquidated damages shall not exceed 7.5 per cent of that part of the price on which it is calculated.

The liquidated damages become due at the Purchaser's written demand but not before all of the goods have been delivered or the contract is terminated under Clause 22.

The Purchaser loses his right to liquidated damages if he has not lodged a written claim for such damages within six months after the time when delivery should have taken place.

22. If the Purchaser is entitled to maximum liquidated damages under Clause 21 and the goods are still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, the Purchaser may, by written notice to the Supplier, terminate the contract in respect of that part of the goods which cannot be used due to the delay.

In case of such termination the Purchaser shall also be entitled to compensation for the loss he suffers because of the Supplier's delay to the extent that the loss exceeds the maximum of liquidated damages, which the Purchaser may claim under Clause 21. This compensation shall not exceed 7.5 per cent of that part of the price which is attributable to the part of the goods in respect of which the contract is terminated.

The Purchaser shall also have the right to terminate the contract by written notice to the Supplier if it is clear that there will be a delay which under Clause 21 would entitle the Purchaser to maximum liquidated damages. In case of termination on this ground the Purchaser shall be entitled to both maximum liquidated damages and compensation under the third paragraph of this Clause.

Except for liquidated damages under Clause 21 and termination of the contract with limited compensation under this Clause 22, all other claims in respect of the Supplier's delay shall be excluded. This limitation of the Supplier's liability shall not apply, however, where the Supplier has been guilty of gross negligence.

**23.** If the Purchaser finds that he will be unable to accept delivery of the goods on the agreed date, or if delay on his part seems likely, he shall without undue delay notify the Supplier thereof in writing stating the reason for the delay and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery on the agreed date he shall nevertheless make any payment which is dependent on delivery as if the goods in question had been delivered. The Supplier shall arrange storage of the goods at the Purchaser's risk and expense. If the Purchaser so requires, the Supplier shall insure the goods at the Purchaser's expense.

**24.** Unless the Purchaser's failure to accept delivery as referred to in Clause 23 is due to any such circumstance as described in Clause 45, the Supplier may by written notice require the Purchaser to accept delivery within a reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may, by written notice to the Purchaser, terminate the contract in respect of that part of the goods which is ready for delivery but has not been delivered due to the Purchaser's default. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the price which is properly attributable to the part of the goods in respect of which the contract is terminated.

#### **Payment**

**25.** Unless otherwise agreed, the agreed purchase price, together with value added tax, if any, shall be invoiced with one third at the formation of the contract, one third when the Supplier gives written notice that the bulk of the goods are ready for delivery. Final payment shall be invoiced at delivery of the goods.

The invoiced amount becomes due 30 days after the date of the invoice.

**26.** If the Purchaser fails to pay, the Supplier shall be entitled to interest from the due date at the rate of interest determined by the law on late payments in the Supplier's country.

If the Purchaser fails to pay by the due date, the Supplier may also, after having notified the Purchaser in writing thereof, suspend performance of his contractual obligations until payment is made.

**27.** If the Purchaser has failed to pay the amount due within three months after the due date, the Supplier may terminate the contract by written notice to the Purchaser and, in addition to interest on late payment, claim compensation for the loss he has suffered. The compensation shall not exceed the agreed purchase price.

**28.** Regardless of the provisions of Clauses 4 and 5, the Supplier shall be entitled to retain patterns, tools and equipment belonging to the Purchaser until the goods have been paid for in full. This right shall also apply in respect of failure to pay the Supplier for his manufacture, checking, adjustment and supplementing of patterns, tools and equipment.

#### **Retention of Title**

**29.** The goods and patterns, tools and equipment which the Supplier shall provide under Clause 5 shall remain the property of the Supplier until paid for in full, to the extent that such retention of title is valid.

#### **Liability for Defects**

**30.** The Supplier shall, in accordance with the provisions of Clauses 32-42 below, by repair or replacement remedy any defect in the goods resulting from faulty design, materials or workmanship.

The Supplier's liability does not cover defects resulting from design, patterns, tools or equipment which the Supplier has not produced or is otherwise responsible for. Nor does it cover defects due to material provided by the Purchaser.

**31.** The Supplier's liability does not cover defects caused by circumstances, which arise after the risk has passed to the Purchaser. The liability does not, for example, cover defects due to conditions of operation deviating from those anticipated in the contract or to improper use of the goods. Nor does it cover defects due to faulty maintenance or incorrect installation from the Purchaser's side, alterations undertaken without the Supplier's written consent or faulty repairs by the Purchaser. Finally the liability does not cover normal wear and tear or deterioration.

**32.** The Supplier's liability is limited to defects which appear within a period of one year from the date of delivery of the goods. If the goods are used more intensively than agreed, this period shall be reduced proportionately.

**33.** For parts, which have been repaired or replaced under Clause 30, the Supplier shall have the same liability for defects as for the original goods for a period of one year. For other parts of the goods the liability period referred to in Clause 32 shall be extended only by the period during which the goods could not be used due to a defect for which the Supplier is liable.

**34.** The Purchaser shall notify the Supplier in writing of a defect without undue delay after the defect has appeared, and in no case later than two weeks after the expiry of the period defined in Clause 31 as supplemented by Clause 32. The notice shall contain a description of how the defect manifests itself. If the Purchaser fails to notify the Supplier in writing within the above time limits, he loses his right to make any claim in respect of the defect.

If there is reason to believe that the defect may cause damage, notice shall be given forthwith. If notice is not given forthwith, the Purchaser loses the right to make any claim based on damage which occurs and which would have been avoided if such notice had been given.

**35.** After receipt of a written notice under Clause 34, the Supplier shall remedy the defect without undue delay. Within this limit the time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities. The Supplier shall bear the costs as specified in Clauses 30-41.

Repair of the defect shall be carried out at the Supplier's premises unless the Supplier finds it appropriate to have the repair carried out at the Purchaser's premises. The Purchaser shall return the goods to the Supplier when repair shall take place at the Supplier's premises.

The Supplier shall carry out dismantling and re installation of the part if this requires special knowledge. If such special knowledge is not required, the Supplier has fulfilled his obligations in respect of the defect when he delivers a duly repaired or replaced part to the Purchaser.

**36.** If the Purchaser gives such notice as referred to in Clause 34, and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the work and costs which he has incurred as a result of the notice.

**37.** If remedy of the defect requires intervention in other equipment than the goods, the Purchaser shall be responsible for any work and costs caused thereby.

**38.** All transports in connection with repair or replacement shall be at the Supplier's risk and expense.

The Purchaser shall follow the Supplier's instructions regarding the transport.

**39.** The Purchaser shall bear the increase in costs for remedying a defect which the Supplier incurs when the goods are located elsewhere than at the destination stated in the contract or - if no destination has been stated - the place of delivery.

**40.** Defective parts which have been replaced in accordance with Clause 30 shall be placed at the Supplier's disposal and shall become his property.

**41.** If the Supplier fails to fulfil his obligations under Clause 35 within a reasonable time, the Purchaser may by written notice require him to do so within a final time. If the Supplier fails to fulfil his obligations within that time limit, the Purchaser may at his option:

- have the necessary repairs carried out at the Supplier's risk and expense, provided that the Purchaser proceeds in a reasonable manner, or
- demand a reduction of the agreed purchase price not exceeding 15 per cent thereof.

If the defect is substantial, the Purchaser may instead terminate the contract by written notice to the Supplier. The Purchaser shall also be entitled to such termination where the defect remains substantial after measures referred to in a). In case of termination, the Purchaser shall be entitled to compensation for the loss he has suffered. The compensation shall not, however, exceed 15 per cent of the agreed purchase price.

**42.** Regardless of the provisions of Clauses 30-41 the Supplier shall have no liability for defects in any part of the goods for more than two years from the start of the liability period referred to in Clause 32.

**43.** The Supplier shall have no liability for defects save as stipulated in Clauses 30-42. This applies to any loss the defect may cause, such as machining costs, loss of production, loss of profit and any other consequential economic loss. This limitation of the Supplier's liability shall not apply, however, if he has been guilty of gross negligence.

#### **Liability for Damage to Property Caused by the Goods**

**44.** The Purchaser shall indemnify and hold the Supplier harmless to the extent that the Supplier incurs liability towards any third party in respect of loss or damage for which the Supplier is not liable towards the Purchaser according to the second and third paragraphs of this Clause.

The Supplier shall have no liability for damage caused by the goods

- to any (movable or immovable) property, or consequential loss due to such damage, occurring while the goods are in the Purchaser's possession, or
- to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

The above limitations of the Supplier's liability shall not apply if he has been guilty of gross negligence.

If a third party lodges a claim for compensation against Supplier or Purchaser for loss or damage referred to in this Clause, the other party to the contract shall forthwith be notified thereof in writing.

The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them based on damage or loss alleged to have been caused by the goods. The liability as between the Supplier and the Purchaser shall, however, always be settled by arbitration in accordance with Clause 48.

#### **Grounds for Relief (force majeure)**

**45.** The following circumstances shall constitute grounds for relief if they impede the performance of the contract or makes performance unreasonably onerous: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this Clause.

The above described circumstances shall constitute grounds for relief only if their effect on the performance of the contract could not be foreseen at the time of formation of the contract.

**46.** The party wishing to claim relief under Clause 45 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance.

If grounds for relief prevent the Purchaser from fulfilling his obligations, he shall reimburse the expenses incurred by the Supplier in securing and protecting the goods.

**47.** Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is delayed more than six months by reason of any grounds for relief as described in Clause 45.

#### **Disputes. Applicable Law**

**48.** Disputes arising out of or in connection with the contract shall not be brought before the court, but shall be finally settled by arbitration in accordance with the law on arbitration applicable in the Supplier's country.

**49.** All disputes arising out of the contract shall be judged according to the law of the Supplier's country.